

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Case No. 13-CV-01375-ADM-LIB

SMA, LLC, MICHAEL BREY, and
STANLEY BREY,

Plaintiffs,

vs.

KATHLEEN SEBELIUS, in her official capacity
as Secretary of the United States Department of
Health and Human Services, et al.

Defendants.

PRELIMINARY INJUNCTION

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Plaintiffs have filed a motion for preliminary injunction and stay in the above-referenced case. (Dkt. No. 10) The Plaintiffs have filed a Local Rule 7.1 meet-and-confer statement indicating an agreement between the parties on the Plaintiffs' proposed order. (Dkt. No. 12) Defendants have filed a document indicating the same. (Dkt. No. 13)

Based on these filings, Defendants are preliminarily enjoined until thirty days after the mandate issues from the Eighth Circuit in *O'Brien v. U.S. Dep't of Health & Human Servs.*, No. 12-3357, or *Annex Medical, Inc. v. Sebelius*, No. 13-1118, whichever occurs first, from enforcing the contraceptive coverage requirement under 42 U.S.C. § 300gg-13(a)(4) and its

implementing regulations¹ against plaintiffs, its employees or any health insurance issuer when offering any group health insurance coverage to American Manufacturing Company (“AMC”) without coverage for “All Food and Drug Administration approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity,” as prescribed by a health care provider. *See* HRSA, Women’s Preventive Services: Required Health Plan Coverage Guidelines, *available at* <http://www.hrsa.gov/womensguidelines> (August 1, 2011), attached as Exhibit A hereto.²

Further, if AMC adopts a self-insured plan under the Employee Retirement Income Security Act of 1974 (ERISA), which must also comply with the requirements of 42 U.S.C. § 300gg-13(a)(4) and its implementing regulations, Defendants are preliminarily enjoined until thirty days after the mandate issues from the Eighth Circuit in *O’Brien* or *Annex Medical*, whichever occurs first, from enforcing the contraceptive coverage requirement under 42 U.S.C. § 300gg-13(a)(4) and its implementing regulations against plaintiffs, its employees or any third party administrator when administering any self-insured plan for AMC without coverage for “All Food and Drug Administration approved contraceptive methods, sterilization procedures,

¹ 75 Fed. Reg. 41,726, 41,728 (July 19, 2010) (interim final rules with request for comments); 76 Fed. Reg. 46,621, 46,621-26 (Aug. 3, 2011) (interim final rules with request for comments); 77 Fed. Reg. 8725, 8725-30 (Feb. 15, 2012) (final rules).

² The U.S. Food and Drug Administration has approved currently the following contraceptive methods and sterilization procedures for women: female condom; diaphragm with spermicide; sponge with spermicide; cervical cap with spermicide; spermicide alone; oral contraceptives (combined pill) (“the Pill”); oral contraceptives (Progestin-only) (“the Mini Pill”); oral contraceptives (extended/continued use) (“the Pill”); patch; vaginal contraceptive ring; shot/injection; Plan B, Plan B One-Step and Next Choice; Ella; Copper IUD; IUD with progestin; implantable rod; sterilization surgery for women and sterilization implant for women. *See* U.S. FDA Birth Control Guide, *available at* <http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf> (updated August 2012), attached as Exhibit B hereto.

and patient education and counseling for all women with reproductive capacity,” as prescribed by a health care provider. Ex. A.³

All proceedings in this case are stayed pending resolution of the appeal in either *O’Brien* or *Annex Medical*, whichever occurs first.

IT IS SO ORDERED.

Date: July 8, 2013

s/Ann D. Montgomery

Hon. Ann Montgomery
U.S. District Court Judge

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See Note 2, *supra*.